SDR

301 NLRB No. 47

D--1718
Stockton, CA

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

ELSCO LIGHTING PRODUCTS, INC.

and

Cases 32--CA--11306 and
32--CA--11437

INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS. LOCAL NO. 591, AFL--CIO

DECISION AND ORDER

By Chairman Stephens and Members Devaney and Raudabaugh

Upon a charge filed by the Union on August 2, 1990, and an amended charge filed on September 13, 1990, the General Counsel of the National Labor Relations Board issued a complaint in Case 32--CA--11306 on September 27, 1990, against Elsco Lighting Products, Inc., the Respondent. Upon a charge filed by the Union on September 28, 1990, the General Counsel issued a complaint in Case 32--CA--11437 on October 30, 1990, against the same Respondent. Each complaint alleges that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges, the amended charge, and the complaints, the Respondent has failed to file an answer in either case.[1]

On November 5, 1990, the General Counsel filed a Motion for Summary Judgment and a supporting memorandum, with exhibits attached, in Case 32--CA--11306. On November 8, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not

[1] The General Counsel alleges that the Respondent has refused to accept certified mail containing the complaint in Case 32--CA--11437.

be granted. On November 30, 1990, the General Counsel filed a Motion for Summary Judgment in Case 32--CA--11437 and a Motion to Consolidate that case with Case 32--CA--11306. On December 10, 1990, the Board issued an order transferring the proceeding to the Board and a Notice to Show Case why the motions should not be granted. The Respondent filed no response in either case. The allegations in the motions are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motions

The Board has decided to grant the General Counsel's unopposed motion to consolidate Cases 32--CA--11306 and 32--CA--11437 for the purpose of ruling on the Motions for Summary Judgment.

Section 102.20 of the Board's Rules and Regulations provides that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. The complaint states in each of the consolidated cases that unless an answer is filed within 14 days of service, ''all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board.''

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motions for Summary Judgment.[2]

On the entire record, the Board makes the following

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[2] The Respondent's refusal to accept delivery of the complaint in Case 32--CA--11437 does not constitute good cause for its failure to file an answer. See Powell & Hunt Coal Co., 293 NLRB No. 105, slip op. at 3 fn. 2 (Apr. 25, 1989).

Findings of Fact

I. Jurisdiction

The Respondent, a Delaware corporation with an office and place of business in Stockton, California, has been engaged in the manufacture of outdoor lighting fixtures. During the 12-month period preceding issuance of the complaint, the Respondent in the course and conduct of its business operations sold and shipped goods or provided services valued in excess of $50,000 directly to customers located outside the State of California. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

Since at least 1970, and at all times material, the Union has been the exclusive collective-bargaining representative, by virtue of Section 9(a) of the Act, of the Respondent's employees in the following unit, which is appropriate for bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time employees performing work in and covered by the job classifications described in ''Schedule A'' of the June 23, 1988 through June 22, 1991 collective bargaining agreement between the Union and Respondent; excluding all other employees, guards, and supervisors as defined in the Act.

The Respondent's recognition of the Union as the exclusive bargaining representative of the unit employees has been embodied in successive collective-bargaining agreements, the most recent of which is effective by its terms for the period from June 23, 1988, through June 22, 1991. The current contract contains provisions for the Respondent to deduct union membership dues and to remit them directly to the Union, and for the Respondent to contribute to a health plan (the Stanislaus Life Plan), vision plan, dental plan, and pension plan for unit employees.

Since on or about February 2, 1990,[3] the Respondent has failed to remit and/or timely to remit withheld union dues to the Union and has ceased making and/or timely making dental plan contributions. In April, the Respondent ceased making health care plan contributions to the contractual Stanislaus Life Plan and replaced that plan with another health care insurance plan, providing employees with different benefits and higher copayments. In July, the Respondent ceased making any contributions to any health care insurance plan on behalf of unit employees. The Respondent engaged in each of the aforementioned acts without prior notice to the Union, without affording the Union an opportunity to bargain, and without the Union's consent or agreement.

In late June or early July, the Union orally requested certain pension benefit information from the Respondent. On or about August 1, by letter, the Union requested certain additional pension benefit information from the Respondent. On or about August 3, by letter, the Union requested certain information about the Respondent's financial condition. Finally, on or about September 11, by letter, the Union requested information about the Respondent's contributions, if any, to the contractual pension, vision, and health plans. It is undisputed, in the absence of an answer to the specific allegations in the complaint, that all requested information is necessary and relevant to the Union's performance of its function as the exclusive collective-bargaining representative of the Respondent's unit employees. Since the respective dates of request, the Respondent has failed and refused to supply the Union with the requested pension benefit, financial condition, and benefit fund contribution information.

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[3] All dates hereafter are in 1990.

We find that, by the aforementioned unilateral actions and refusals to provide information, the Respondent has effectively repudiated its collective-bargaining agreement with the Union. Furthermore, we find that the Respondent's failure to comply with contractual dues-checkoff, health plan contribution, and dental plan contribution provisions and its unilateral substitution of a different health plan for unit employees, its refusal to provide requested information that is relevant and necessary to the Union's representative duties, and its repudiation of its collective-bargaining agreement with the Union violated Section 8(a)(5) and (1) of the Act.

Conclusions of Law

1. The Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act: by unilaterally failing and refusing since about February 2, 1990, to remit and/or timely to remit withheld union dues to the Union, and to make contributions to a dental care plan on behalf of unit employees, as required by its collective-bargaining agreement with the Union; by unilaterally failing in April 1990 to make contributions to a contractual health plan and substituting a different health insurance plan for unit employees; by unilaterally ceasing in July 1990 to make any contributions to any health insurance plan on behalf of unit employees; by refusing to provide pension benefit, financial condition, and benefit fund contribution information relevant to the Union's representative duties and requested by the Union in late June or early July, on or about August 1, on or about August 3, and on or about September 11; and by effectively repudiating its collective-bargaining agreement with the Union.

2. The Respondent's unfair labor practices affect commerce within the meaning of Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

We shall order the Respondent to reinstate and to adhere to all terms of its current collective-bargaining agreement with the Union, including provisions for dues-checkoff, dental plan contributions, and health plan contributions to the Stanislaus Life Plan. We shall also order the Respondent to make unit employees whole for any loss of earnings they may have suffered because of the repudiation of the collective-bargaining agreement, in the manner prescribed in Ogle Protection Service, 183 NLRB 682, 683 (1970), and by paying all contributions to the contractual dental plan and the health care plan that have not been paid and that would have been paid but for the Respondent's unlawful discontinuance of payments.[4] We shall also order the Respondent to reimburse unit employees for any losses ensuing from its failure to make contractual dental plan and health care plan contributions. Kraft Plumbing & Heating, 252 NLRB 891 fn. 2 (1980), enfd. mem. 661 F.2d 940 (9th Cir. 1981). This shall include reimbursing employees for any contributions they themselves may have made for the maintenance of their contractual dental and health care funds after the Respondent ceased making required contributions to those funds. Concord Metal, 295 NLRB No. 94, slip op. at 8--9 (June 30, 1989). We shall also order the Respondent to remit to the Union all

[4] Because the provisions of employee benefit fund agreements are variable and complex, we leave to the compliance stage the question of whether the Respondent must pay any additional amounts into the benefit funds in order to satisfy our ''make-whole'' remedy. Any additional amounts shall be determined in the manner set forth in Merryweather Optical Co., 240 NLRB 1213, 1216 fn. 7 (1979).

union dues that it has deducted from the pay of unit employees. All payments to the employees and to the Union shall include interest to be computed in the manner prescribed in New Horizons for the Retarded, 283 NLRB 1173 (1987). Finally, we shall order the Respondent, on request, to supply the information previously requested by the Union in late June or early July 1990, on or about August 1, 1990, on or about August 3, 1990, and on or about September 11, 1990.

ORDER

The National Labor Relations Board orders that the Respondent, Elsco Lighting Products, Inc., Stockton, California, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with International Brotherhood of Electrical Workers, Local No. 591, AFL--CIO as the exclusive representative of its employees in the appropriate bargaining unit described below, by effectively repudiating and failing to continue in full force and effect the terms of a current collective-bargaining agreement, including terms requiring the Respondent to make contributions to dental and health care plans on behalf of unit employees and to remit to the Union dues deducted from the pay of unit employees. The appropriate unit is:

> All full-time and regular part-time employees performing work in and covered by the job classifications described in ''Schedule A'' of the June 23, 1988 through June 22, 1991 collective bargaining agreement between the Union and the Respondent; excluding all other employees, guards, and supervisors as defined in the Act.

(b) Unilaterally implementing a different health care plan for unit employees.

(c) Refusing to provide the Union requested information that is necessary and relevant to the Union's function as exclusive representative of unit employees.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Reinstate and adhere to all terms of the collective-bargaining agreement effective from June 23, 1988, to June 22, 1991.

(b) Reimburse the contractual dental and health care plans for all contributions it has unlawfully withheld, and make all unit employees whole, with interest, for any loss of earnings they may have suffered because of the repudiation of the collective-bargaining agreement and for any losses ensuing from its failure to make contractual dental and health care plan contributions, in accord with the remedy section of this decision.

(c) Remit to the Union all dues deducted from the pay of unit employees, with interest, as set forth in the remedy section of this decision.

(d) On request, supply the Union with previously requested pension benefit, financial condition, and benefit funds contribution information, which is relevant to its function as exclusive representative of unit employees.

(e) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(f) Post at its facility in Stockton, California, copies of the attached notice marked ''Appendix.''[5] Copies of the notice, on forms provided by the Regional Director for Region 32, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(g) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. January 28, 1991

James M. Stephens, Chairman

Dennis M. Devaney, Member

John N. Raudabaugh, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[5] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD'' shall read ''POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD.''

APPENDIX

NOTICE TO EMPLOYEES

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with International Brotherhood of Electrical Workers, Local No. 591, AFL--CIO as the exclusive representative of our employees in the appropriate bargaining unit described below, by effectively repudiating and failing to continue in full force and effect the terms of our current collective-bargaining agreement, including terms requiring us to make contributions to dental and health care plans on behalf of unit employees and to remit to the Union dues deducted from the pay of unit employees. The appropriate unit is:

> All full-time and regular part-time employees performing work in and covered by the job classifications described in ''Schedule A'' of the June 23, 1988 through June 22, 1991 collective bargaining agreement between the Union and us; excluding all other employees, guards, and supervisors as defined in the Act.

WE WILL NOT unilaterally implement a different health care plan for unit employees.

WE WILL NOT refuse to provide the Union requested information that is necessary and relevant to the Union's function as exclusive representative of unit employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL reinstate and adhere to all terms of our collective-bargaining agreement, which is effective from June 23, 1988, through June 22, 1991.

WE WILL reimburse the contractual dental and health care plans for all contributions we have unlawfully withheld, and WE WILL make all unit employees whole, with interest, for any loss of earnings they may have suffered because of the repudiation of the collective-bargaining agreement, and for any losses ensuing from our failure to make contractual dental and health care plan contributions.

WE WILL remit to the Union all dues deducted from the pay of unit employees, with interest.

WE WILL, on request, supply the Union with previously requested pension benefit, financial condition, and contractual benefit funds contribution

information, which is relevant to its function as exclusive representative of unit employees.

ELSCO LIGHTING PRODUCTS, INC.
(Employer)

Dated _____ By _____
(Representative) (Title)

This is an official notice and must not be defaced by anyone.

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 2201 Broadway, Second Floor, Oakland, California 94612-3017, Telephone 415--273--6122.